

NITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 3:20-CV-415-DPJ-FKB

THE REAL PROPERTY KNOWN AS 115
ROSEDOWNE BEND MADISON, MS
39110

DEFENDANT

ORDER REQUESTING SURREPLY

This matter is before the Court on a motion to dismiss [19] filed by Claimants Kristin DiBiase and Theodore Marvin DiBiase, Jr. In their Reply [34] to the Government’s Response in Opposition [30], the Claimants have raised, for the first time, a question whether Temporary Assistance to Needy Families (TANF) funds paid to Familiae LLC qualify as “benefits” under 18 U.S.C. § 666. Reply Br. [34] at 4–7 (citing *Fischer v. United States*, 529 U.S. 667, 677, 681–82 (2000)). The Government has had no opportunity to address this issue.

It is generally “the practice of [the Fifth Circuit] and the district courts to refuse to consider arguments raised for the first time in reply briefs.” *Gillaspy v. Dall. Indep. Sch. Dist.*, 278 F. App’x 307, 315 (5th Cir. 2008). That said, the Fifth Circuit “ha[s] not comprehensively identified all the circumstances under which a district court may rely on [such] arguments,” though normally the non-movant should receive “an adequate opportunity to respond before ruling.” *Id.* (addressing Fed. R. Civ. P. 56(c)) (citation omitted).

Here, Claimants raise an important issue that merits consideration after full briefing. The Court, therefore, instructs the Government to file a surreply addressing whether “the test established by *Fischer* and its progeny” has been met in this case, as addressed in Section II of

Claimant's reply. Reply Br. [34] at 5. That surreply should be filed no later than September 15, 2021.

SO ORDERED AND ADJUDGED this the 1st day of September, 2021.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE